REMARKS

Claims 14-26 are selected for prosecution.

Claim 14 objected to be the Examiner has been amended to correct a typo.

Claims 14-20, 22 and 24-26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. Claims 21 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. in view of Weaver.

This rejection is respectfully traversed for the following reasons.

Claim 14 recites a method of selling goods, comprising the steps of:

-selecting human models representing categories of a pre-set classification of goods,

-trying on the goods by the human models of the respective categories, at least one model is assigned for trying on goods that belong to a category of the classification,

-obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs,

-assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer,

-determining by the computer system evaluation marks for the goods in the category assigned to the customer, the evaluation marks being pre-set based on evaluating the goods tried on by the respective model,

-pre-selecting by the computer system based on the determined evaluation marks, a group of items among the goods in the category assigned to the customer, and

-enabling the customer to access said group of items.

The Examiner takes the position that Bailey discloses **the steps of obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs, and assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer.**

Bailey discloses a website for selling custom-tailored clothing. The website gives access "to a wide variety of catalogues containing clothes in various styles. Clothing is projected as a 3D model that can be rotated for multiple views on the customer's own home computer. Video and sound clips are available to display and describe the clothing on human models with varying physical characteristics. This display allows the customer to gain a better idea of how the clothing might look on them." (the paragraph bridging pages 6 and 7).

"Having selecting some clothes, the customer is asked to make choices about materials, colors, style options, and body measurements. Based on this data, the resulting garment is presented for inspection on an appropriately proportioned computer generated model. If the customer finds the garment acceptable, he or she initiates the purchase... " (the first full paragraph on page 7).

Hence, the reference does not teach or suggest obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs, as claim 14 requires.

Instead, the reference teaches that "the customer is asked to make choices about ... body measurements" (the first sentence in the first full paragraph on page 7) to prepare "the resulting garment."

As the Bailey system relates to custom-tailored clothing (see the first full paragraph in the last column of page 6), one skilled in the art would realize that "choices about body measurements" indicate that a customer enters his or her body measurements to enable the tailor to prepare clothing based on specific body measurements.

It is respectfully submitted that there is no need to determine to which category in a pre-set classification of goods the customer belongs for producing custom-tailored clothing. Moreover, as sizes differ for different "designer labels", the size of the customer does not provide information required to prepare customer-tailored clothing. Accordingly, it makes no sense to classify customers by their sizes to make custom-tailored clothing produced to fit a particular customer regardless of his or her size.

Hence, the reference does not suggest determining to which category in a pre-set classification of goods the customer belongs, and therefore, Bailey cannot suggest the claimed step of obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs.

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Further, the reference does not teach assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer, as claim 14 requires.

The Examiner takes the position that assigning a particular size to a customer corresponds to this step. However, as discussed above, no size is assigned to a customer in a custom-tailored system of Bailey.

Moreover, even if it is assumed *arguendo* that a size is assigned, the claimed step would not result because the reference does not suggest that human models correspond to specific assigned sizes.

Accordingly, Bailey does not teach or suggest the claimed steps of obtaining individual characteristics of a customer to determine to which category in a pre-set classification of goods the customer belongs, and assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer.

Moreover, Bailey does not teach or suggest the claimed step of **determining evaluation marks (pre-set based on evaluating the goods tried on by the respective model) for the goods in the category assigned to the customer.** The Examiner takes the position that it is inherent for a computer system to determine evaluation marks such as "buy" or "don't buy" for the goods in the category (considered by the Examiner to correspond to a size) assigned to the customer.

This position is respectfully traversed. The Examiner is reminded that to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is

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necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probability or possibilities. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

However, in the custom-tailoring system of Bailey, a decision as to "buy" or "not to buy" is made for all goods offered by a website, rather than for goods in a particular size. Moreover, in this custom-tailoring system, goods are not grouped by particular sizes. Therefore, there is no reason to conclude that the Bailey system necessarily includes determining evaluation marks such as "buy" or "don't buy" for the goods of a particular size.

Furthermore, as discussed above, no sizes are assigned to customers. Therefore, there is no reason to conclude that the Bailey system necessarily includes determining evaluation marks such as "buy" or "don't buy" for the goods in the category assigned to the customer.

Finally, the reference does no teach or suggest the claimed steps of **pre-selecting by the computer system based on the determined evaluation marks, a group of items among the goods in the category assigned to the customer, and enabling the customer to access said group of items.**

The Examiner takes the position that the group of items may correspond to "the items to be purchased." This position is respectfully traversed.

In the system of Bailey, the computer system does not pre-select the items to be purchased. Instead, the computer system offers all available items, and the customer selects the items to be purchased (see the first sentence in the first full paragraph on page 7).

Moreover, as discussed above, Bailey does not suggest assigning a particular category to a customer in the manner required in claim 14. Therefore, the reference cannot suggest pre-selecting the items to be purchased in the category assigned to the customer.

Furthermore, it is noted that the reference does not teach that a customer selects a group of items to be purchased.

As Bailey does not teach pre-selecting by the computer system a group of items among the goods in the category assigned to the customer, the reference cannot teach or suggest the step of enabling the customer to access this group of items.

Accordingly, the reference does not teach or suggest the claimed steps discussed above.

Further, the Examiner admits that the reference does not include evaluation marks pre-set based on evaluating the goods tried on by the respective model. However, he believes that this feature would be obvious. The Examiner's conclusion of obviousness is respectfully traversed.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985).

As discussed above, Bailey does not suggest assigning by a computer system to the customer the category that corresponds to a human model having similar individual characteristics as the customer. Therefore, the reference provides no reason to modify the Bailey system to include evaluation marks pre-set based on evaluating the goods tried on by the respective model.

The Examiner has apparently failed to give adequate consideration to the particular problems and solution addressed by the claimed invention. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); *In re Rothermel*, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). Specifically, as discussed in the specification, in conventional Internet-based systems, customers have to choose among hundreds of offered articles rather than among a much smaller group of articles pre-selected by models and/or experts for a particular type of a customer. As a result, Internet-based clothes shopping becomes slow and cumbersome. The present invention provides a solution to this problem by pre-selecting a group of items based on the determined evaluation marks in the manner required by claim 14.

By contrast, the Bailey system does not address the problem solved by the present invention and does not suggest the claimed solution.

Accordingly, Applicant submits that the absence in the reference of the details recited in claim 14, coupled with the particular problem addressed and solved by the claimed invention, undermine the basis for the Examiner's rejection of claim 14 under 35 U.S.C. § 103.

Dependent claims 15-26 are defined over the prior art at least for the reasons presented above in connection with claim 14.

Applicant, therefore, respectfully submits that the rejection of claims 14-26 under 35 U.S.C. § 103 is improper and should be withdrawn.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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